HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 544 OF 2004.

Smt. Janabai Ramchandra Barge,
R/o: Nandgiri, Tal: Koregaon,
Dist: Satara.
Through Power of Attorney Holder
Mr. Prakash Waman Chatur. ..Petitioner.

Versus.

1. Mr. Mahadeo Manyaba Barge,
since deceased through the legal
heirs and legal Representatives.

1-A. Smt. Subhadra Mahadeo Barge,
1-B. Sou. Krishnabai Jaysing Bhosale,

2. Ramesh Mahadeo Barge.

3. Tulsabai Kisan Barge.

4. Vasant Laxman Barge. ..Respondents.

Shri. Dilip Bodke for the Petitioner.

Shri. S.P.Kadam for the respondents.

CORAM: S.B.MHASE, J.

DATE : JULY 19, 2006.

ORAL JUDGMENT.

1. Rule returnable forthwith with the consent of the parties.

2. By this writ petition the petitioner has invoked the jurisdiction of this Court under Article

227 of the Constitution of India challenging the order passed by the IInd Jt. Civil Judge, Senior Division, Satara below Exhibit-44 in Special Civil Suit No. 137 of 1997 thereby the Civil Judge, Senior Division, Satara reviewed the order dated 23.6.1998 passed below Exhibit 38 granting maintenance in favour of the petitioner at the rate of Rs.500/- per month till the disposal of the suit. The said order was passed as against the defendant nos. 1, 3 and 4.

3. Writ petition arises in the following facts and circumstances.

. Special Civil Suit No. 137 of 1997 was filed by the petitioner in the Court of the Civil Judge, Senior Division, Satara against the respondent nos. 1 to 4 herein and 17 others for partition, possession and mesne profit. Original defendant No.1, now dead, is father-in-law of the petitioner-plaintiff. Subhadra (respondent no.1-A) is wife of said Mahadeo (Original defendant no.1). Mahadeo and Subhadra were/are having three sons, namely, Ramchandra, Ramesh and Kisan. Out of these three sons, Ramchandra died on 19.11.1979 and the plaintiff-petitioner is the wife of said deceased Ramchandra. The plaintiff is not having any issue out of the wedlock with deceased Ramchandra.

Other son of Mahadeo and Subhadra, namely, Kisan expired on 14.4.1992 leaving behind him wife Tulasabai who is defendant no.3 in the suit and respondent no.3 in the present petition. Plaintiff- Janabai, therefore, has filed a suit for partition and possession of the share of her deceased husband - Ramchandra, which plaintiff has inherited under the Hindu Succession Act, 1956. It is to be noted that Ramchandra expired being a member of the joint family and there was no partition effected in respect of the properties of the joint family which are enumerated in the suit. It appears that the original defendant no.1, defendant no.2 and the wife of deceased Kisan (original defendant no.3) are in possession of the joint family properties. In the said suit, the defendant nos. 5 to 17 were joined as parties because they were/are co-owners of the certain properties which were possessed by the joint family of the defendant nos. 1 to 3 and the plaintiff. However, so far as the main controversy is concerned, the defendant nos. 4 to 17 are not relevant, they will be only relevant while effecting the actual partition in case the suit is decided in favour of the plaintiff.

4. It is to be noted that the genealogy of the plaintiff and defendant nos. 1 to 3 is not disputed.

Also, it is to be noted that the relations and date of death of Ramchandra and Kisan are also not in dispute. The nature of the property is also not in dispute, namely, that it is a joint family property.

5. When the said suit was filed the plaintiff-petitioner submitted an application Exhibit 38 making a statement that all the properties of the joint family are in possession of the defendant nos. 1 to 3 and since she has no separate income of herself, the order of maintenance at the rate of 1200/- per month be passed as against the defendant nos. 1 to 3. However, it appears that while passing the order below Exhibit 38 on 23.6.1998 the Civil Judge, Sr.Division passed order as against defendant nos. 1, 3 & 4. In fact, when at a particular point of time, when the order was passed, since the defendant no.4 was not a member of the joint family, the order as against the defendant no.4 was improper and unjust. However, the order as against defendant Nos. 1 & 3, and more particularly as against defendant no.1 who was Karta of the joint family property was just and proper. However, it appears that application Exhibit 44 was submitted by the defendant Nos. 1, 3 & 4 making several grievances which were considered and the order below Exhibit 38 was set aside. This order is challenged before this

Court.

6. Needless to say that as against the defendant nos.1 and 3 the order of maintenance can be passed since they are in possession of the joint family properties and the plaintiff-petitioner being the wife of one of the co-parceners who died in 1979 was entitled to have a right of maintenance when the said properties are in possession of the father-in-law and other co-parceners. Therefore, the error committed by the IInd Joint Civil Judge, Senior Division, Satara while allowing application Exhibit 44 is eloquently clear, namely, when there is a legal obligation as against defendant nos. 1 and 3 being in possession of the joint family properties to maintain the plaintiff the order should not have been set aside by the Court. Under these circumstances, this Court finds that the order passed on 21st July 2000 by the IInd Joint Civil Judge, Senior Division, Satara below Exhibit-44 is bad to the extent of respondent nos. 1 to 3, but it was good as against the respondent no.4 who was original defendant no.4. Therefore, following order is passed.

: O R D E R :

Writ petition is partly allowed. Order dated 21st July 2000 passed below Exhibit 44

is quashed and set aside to the extent of respondent nos. 1 and 3 (original defendant nos. 1 and 3) and it is made clear that the order passed below Exhibit 38 is valid and proper as against the respondent nos. 1 and 3 (original defendant nos. 1 and 3). Plaintiff - petitioner can proceed to execute the said order. However, the order dated 21st July 2000 passed by Civil Judge, Senior Division, Satara below Exhibit 44 is maintained to the extent of the respondent no.4 (original defendant no.4) only. Writ petition is accordingly disposed of.

(S.B.MHASE, J.)